

DIA ART FOUNDATION

IBLA 81-829

Decided August 3, 1981

Appeal from decision of New Mexico State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. NM MC 29102 through NM MC 29137.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the loss must be borne by the claimant.

APPEARANCES: Audrey C. Ward, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Dia Art Foundation appeals from the New Mexico State Office, Bureau of Land Management (BLM), decision dated May 19, 1981, which declared the unpatented Pay Day Nos. 217 through 252 lode mining claims, NM MC 29102 through NM MC 29137, abandoned and void because evidence of assessment work or notice of intent to hold, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976),

and 43 CFR 3833.2-1, had not been filed with BLM on or before December 30, 1980.

Appellant alleges that the required proof of assessment work had been filed for record July 23, 1980, in Catron County, New Mexico, and that it had been informed that a copy of the recorded instrument would be forwarded to BLM by the county clerk.

[1] Section 314 of FLPMA, 43 U.S.C. § 1744 (1976), and the implementing regulations, 43 CFR 3833.2-1(a) and 3833.4, require that evidence of assessment work for each assessment year be filed in the proper BLM office within the specified time limits, under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely or properly filed.

Despite appellant's statement that it had assumed that the document was properly and timely mailed, the regulations define "file" to mean "being received and date stamped by the proper BLM office," 43 CFR 1821.2-2(f), 43 CFR 3833.102(a). Thus, even if the document had been mailed and an error by the Postal Service prevented it from reaching the BLM office, that fact would not excuse appellant's failure to comply with the cited regulations. Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979). The Board has repeatedly held that a mining claimant, having chosen the means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Edward P. Murphy, 48 IBLA 211 (1980); Everett Yount, *supra*; James Yates, *supra*; Amanada Mining & Manufacturing Association, 42 IBLA 144 (1979). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mail does not constitute filing. 43 CFR 1821.2-2(f).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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James L. Burski  
Administrative Judge

